CF0000062096

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE : AT JABALPUR.

CRIMINAL APPEAL NO. 3 /1999.

Bahadur-son of Bhim Chandra, aged 25 years, Resident of Village Thuthi, Police Station Jaijaipur, District Bilaspur (MP).

... APPELLANT. (IN JAIL)

Vs.

State of Madhya Pradesh ... RESPONDENT.

Filed on 4.1.99
by Shri M. Auth
Advocate

Rlo. A. R

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE.

CONVICTION:	SENTENCE:
U/s.302 I.P.C. :	Imprisonment for life & fine of Rs.5000/- in default, R.I. for one year.

....

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...C.A.-3/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH -:

HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J.

31.01.2007

Shri Vishnu Koshta, Counsel for the appellant.

Shri Sudhir Bajpayee, Dy. Govt. Advocate for the State.

Heard.

Oral judgment dictated on *Dais*.

As per L.C. Bhadoo, Ag. Chief Justice;

This appeal is directed against the judgment of conviction and order of sentence dated 27.11.1998 passed by the Additional Sessions Judge, Sakti, District – Bilaspur in Sessions Trial No.87/98, whereby, the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 1 year.

The case of the prosecution is that on 3rd November 1997 between 4:30 - 5:00 p.m., when Kewra Bai was in her house at village -Thuthi, accused enquired about his mother from her, she replied that she does not know about his mother, then accused/appellant picked the lantern lying nearby, poured kerosene oil on her from it and set her on fire. Kewra Bai was thereafter taken to the Govt. Hospital, Jaijaipur, where Shri N.

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मामला क्रमांक ...G.A.-3/99... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kujur, Sub-Inspector, Police Station – Jaijaipur (PW-21) reached and recorded *Dehatinalisi* (Ex.-P/35) as per the statement given by Kewra Bai. Based on that, First Information Report (Ex.-P/36) for commission of offence under Section 307 of IPC was registered. From Jaijaipur hospital, she was taken to the District Hospital, Bilaspur, from Bilaspur, she was taken to Bhilai Hospital. During treatment in Bhilai hospital, she succumbed to those burn injuries on 07/11/1997, therefore, offence was converted into Section 302 of IPC. Postmortem was conducted by Dr. A.P. Savant (PW-25) on the body of the deceased, prepared the postmortem report (Ex.P/41), in which, he opined that cause of death was due to excessive burns i.e. 75% burn injuries, which was antemortem in nature. During her treatment, dying declaration (Ex.-P/10) was recorded by Shri G.R. Mahilage, Naib Tehsildar and Executive Magistrate (PW-12)

After completion of the investigation, the charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Sakti, who in turn committed the case to the Sessions Judge, Bilaspur, from where the learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 25 witnesses. The statement of the accused/appellant was recorded under Section 313 of Cr.P.C., in

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मामला क्रमांक ...Cr.A...3/99. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been implicated in a false case. He also examined one Balram as defence witness and the defence witness stated that on enquiry from Kewra Bai, she disclosed that when she was lighting cow dung after pouring kerosene oil on it, her sari came in contact with the cow dung and she sustained burn injuries.

Learned Additional Sessions Judge after hearing counsel for the parties and perusal of the record convicted and sentenced the accused/appellant as aforementioned.

We have heard learned counsel for the respective parties and perused the record.

In this case, there is no ocular or direct evidence. The conviction is based on the dying declaration (Ex.-P/10) recorded by the Naib Tehsildar and Executive Magistrate as also the *Dehatinalisi* in the form of dying declaration (Ex.-P/35) recorded by Shri N. Kujur, Sub-Inspector as also the oral dying declaration made by the deceased to PW-1 – Gorelal (father of the deceased), PW-2 – Rambai (mother of the deceased), PW-3 – Sahodra Bai (Aunt of the deceased), PW-4 Nawdhaprasad, PW-7 – Shivkumar and PW-9 – Setram.

As far as *Dehatinalisi* in the form of dying declaration (Ex.-P/35) recorded by Shri N. Kujur, Sub-Inspector (PW-21) and

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मामला क्रमांक ...G.A.-.3./.9.9. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dying declaration (Ex.-P/10) recorded by Shri G.R. Mahilage, Naib Tehsildar and Executive Magistrate (PW-12) are concerned; these two witnesses in their evidence have not reproduced the words stated by Kewra Bai to them while making dying declaration. They have simply exhibited *Dehatinalisi,* dying declaration and have not stated the actual words stated by Kewara Bai, therefore, in the legal terms they have failed to prove the contents of *Dehatinalisi* and dying declaration that deceased – Kewra Bai made statement to them to the effect that the accused set her on fire after pouring kerosene oil on her body.

As far as oral dying declaration by Kewra Bai before the witnesses namely PW- 1 - Gorelal, PW-2 – Rambai, PW-3 – Sahodrabai, PW-4 – Nawdhaprasad, PW-7 –Shivkumar and PW-9 – Setram is concerned, we have perused the evidence of these witnesses. PW-1 – Gorelal, who is the father of the deceased, has stated that 15 days after the marriage, he brought her daughter to his house and thereafter, accused/appellant (husband of the deceased) took Kewra Bai to his residence. Kewra Bai again came to his house on the occasion of Dusshera festival and on the next day of Deepawali, he asked his daughter – Kewra Bai to go to the in-laws place, on which, she stated that she will not go to the in-laws place as her husband – Bahadur is insisting her to bring T.V., otherwise, he will set her on fire. However, he persuaded his daughter Kewra Bai, she was left at the place of accused on Friday and on Monday; he received information that his daughter has

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मामला क्रमांक ...C.A.-3/99... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sustained burn injuries. Thereafter, he alongwith his wife - Rambai, Sahodrabai, Shivkumar, Setram left for village – Thuthi. When they reached to the house of accused/appellant, villagers informed them that Kewra Bai has been taken to the Govt. Hospital, Jaijaipur for treatment. When they reached to the Bus Stand, they saw his daughter in a bullock cart and her in-laws were also standing there. On enquiry, his daughter disclosed that accused – Bahadur (her husband) has set her on fire after pouring kerosene oil on her body. Similar is the evidence of PW-2 – Rambai, PW-3 – Sahodrabai, PW-4 – Nawdhaprasad, PW-7 – Shivkumar and PW-9 – Setram.

The defence has not been able to elicit any circumstance in the cross-examination of these witnesses, which discredit the evidence of these witnesses. It is an admitted fact that Kewra Bai died on 7/11/1997 i.e. after 4 days of the incident, therefore, she was in a position to speak and there is nothing on record to indicate that these witnesses on account of any bias or animosity have deposed against the accused/appellant. From the evidence of these witnesses, it is established that the oral dying declaration was voluntary, true and Kewra Bai was in a state of fit mind to give the statement, which has been certified by the Doctor on the dying declaration (Ex.P/10). Therefore, based on the evidence of these witnesses, it is established that Kewra Bai made oral dying declaration in their presence regarding involvement of the accused in committing the murder of deceased.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	As per the evidence of Dr. A.P. Sawant (PW-25), who had stated that on 08/11/1997, he conducted the postmortem on the body of the deceased -Kewra Bai. There were burn injuries up to 75% on her body. The cause of death was excessive burn injuries and on account of carbon, which entered into the wind pipe. The report is Ex.-P/41. Therefore, it is established that Kewra Bai died on account of excessive burn injuries, which were caused by the accused/appellant by setting her on fire after pouring kerosene oil on her body. In the result, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court. The appeal being devoid of merits is liable to be dismissed and it is hereby dismissed. **Sd/-** **Acting Chief Justice** **Sd/-** **Sunil Kumar Sinha** **Judge**	

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